CF0000058526

(2)

Division Bench (Criminal)

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR.

CRIMINAL APPEAL No. 1682/95

APPELLANTS. : 1. Lakhan son of Bhaiya Ram Suryawanshi aged about 42 years.

2. Narayan Prasad son of Lakhan Suryawanshi, aged about 22 years,

Both residents of village Dhamni, Police Station Chakarbhata, District Bilaspur.

-Versus-

RESPONDENT : The State of Madhya Pradesh

APPEAL UNDER SECTION 374(2) CRIMINAL PROCEDURE CODE.

| CONVICTION. | SENTENCE |
|---|---|
| U/s 302 I.P.C. | To each of the appellants<br>Imprisonment for life and fine of Rs.5,000/-, in default, 2 years R.I. |

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

**मामला क्रमांक** ..... G.A. 1682/95 ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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Division Bench: -

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

18-1-2006

Mr. Ashok Dixit, counsel for the appellants.

Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. Alok Bakshi, Govt. Advocate for the State/respondent.

Oral judgment dictated on *Dais.*

Per L.C. Bhadoo; J.

By this appeal under Section 374 (2) of the Cr.P.C., accused Lakhan & Narayan Prasad have questioned the legality of the judgment of conviction and order of sentence dated 17th November, 1995, passed by the 3rd Additional Sessions Judge, Bilaspur, in Sessions Trial No.431/1992, whereby learned Additional Sessions Judge after holding the accused/appellants guilty for commission of offence under Section 302 of the I.P.C., convicted and sentenced each of the accused to undergo imprisonment for life and pay a fine of Rs.5,000/-, in default of payment of fine to further undergo R.I. for two years.

The case of the prosecution, in brief, is that in the intervening night of 22-8-1992 & 23-8-1992 at 0015 hours, deceased Premlal along with his brother Chatlal, one Punnilal & Rajkumar lodged report in Police Station: Chakarbhata to the effect that on 22-8-1992 at about 8.30 p.m. he was going from his house towards the pond, Lakhan was sitting near his house, on seeing him Lakhan

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**आदेश पत्रक (पूर्वानुबद्ध)**

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश — 2 — | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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started abusing him saying that "you are levelling false allegations against me that I am a witchcraft", on which he denied. At that time, Narayan came out from the house, both of them started abusing him and started assaulting with Lathi on his forehead, back, and on both sides of thigh as a result of which blood started oozing out of the injuries. Hearing the shouts, Chatlal, Sukhnand & Punnilal came and intervened. The Head Constable after entering the report in the Roj Namcha forwarded the accused under Ex.P-6 to Primary Health Centre, Chakarbhata, for medical examination, where Dr. C.P. Aagre (PW-7) examined Premlal and prepared the injury report Ex.P-7 in which he noticed three lacerated wounds, abrasions six in number surrounded by contusions and mentioned that injury Nos.1 to 3 were caused by hard and blunt object. However, injured Premlal died on the same night at 3.30 a.m. and his body was sent for post-mortem examination. Post-mortem was conducted by Dr. Vijay Kumar Verma (PW-8) and he prepared post-mortem report Ex.P-9. The Investigating Officer prepared Panchnama of the body Ex.P-18. He also prepared site plan of the place of occurrence Ex.P-10. While in police custody, accused Lakhan gave memorandum Ex.P-13 and accused Narayan gave memorandum Ex.P-14. In pursuance of the memorandums, weapons of offence Lathis were recovered at the instance of accused Lakhan and accused Narayan under Ex.P-15 and Ex.P-16, respectively, ~~based on that~~, The F.I.R. Ex.P-21 was registered. Weapons of offence Lathis were sent for examination by the doctor under Ex.P-22 and the doctor examining the same gave report Ex.P-8.

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आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश - 3 - | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Bilaspur, who in turn committed the case to the Sessions Judge, Bilaspur, from where learned Additional Sessions Judge received the case for trial.

The prosecution in order to establish charge examined twenty witnesses. Statements of the accused persons were recorded by learned Additional Sessions Judge in which they denied the prosecution evidence appearing against them and stated that they are innocent and have been falsely implicated in the crime. Learned Additional Sessions Judge after hearing the arguments of Additional Public Prosecutor and counsel for the accused convicted and sentenced each of the accused as mentioned in para 1 of this judgment.

We have heard Mr. Ashok Dixit, learned counsel for the appellants and Mr. U.N.S. Deo, learned Additional Public Prosecutor with Mr. Alok Bakshi, learned Govt. Advocate on behalf of the State/respondent.

The homicidal death of Premlal is not in dispute. As far as the involvement of the accused persons in the crime in question is concerned, case against the accused persons rests on the evidence of Sushila Bai (PW-1), the eyewitness and Chatlal (PW-2), brother of the deceased, as also the dying declaration which was made by Premlal before Head Constable Sunhar Singh (PW-6).

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आदेश पत्रक (पूर्वानुबद्ध)

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Learned counsel for the accused/appellants submitted that Sushila Bai (PW-1) has improved her evidence before the Court and in her evidence there are omissions and contradictions, therefore, based on her evidence accused cannot be convicted. He also argued that as far as the dying declaration of Premlal is concerned, when Premlal was taken to Police Station: Chakarbhata, he was unconscious, therefore, he was not in a position to give information. Learned counsel further argued that the appellants have been falsely implicated in the crime.

On the other hand, Mr. U.N.S Deo, learned Additional Public Prosecutor and Mr. Alok Bakshi, learned Govt. Advocate supported the judgment of the trial Court.

In order to appreciate the arguments advanced by learned counsel for the parties, we have scrutinized the evidence of Sushila Bai (PW-1). She has stated that on the fateful day, at about 8.30 p.m. she was at her residence, she heard the sound, came out of the house and saw that Premlal was lying on the ground, accused Lakhan was attacking with axe and Narayan was attacking with spade (Rampa). She asked the accused persons not to assault. At the time of incident, her brother Sukhnand was also there, but Sukhnand died on account of illness. She immediately raised cries and informed the brother of Premlal that the accused persons are attacking Premlal, thereafter, she saw that the accused persons were going towards the water tap and Premlal was lying there. There were injuries on the forehead of Premlal. In cross-examination, this witness has stated that when she came out of the house, Premlal was lying on

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आदेश पत्रक (पूर्वानुबद्ध)

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the ground, his back was on the upper side, mouth was towards the ground, and the accused were attacking him. In para 8 she has stated that the accused persons assaulted Premlal with axe and spade, whereas in para 9 she has stated that it is incorrect to say that she informed the Police Officer that the accused persons assaulted Premlal with Lathi.

It is true that the weapons of offence Lathis have been recovered at the instance of the accused persons.

Chatlal (PW-2) has stated in his evidence that on the fateful day he went to the house of Rajkumar for watching television, when the picture was over, he heard the cries of Sushila Bai, she informed him that Narayan & Lakhan were attacking his brother. When he came to the scene, he saw that his brother was lying on the ground, in the street, in front of the house of the accused persons. On enquiry from Sushila she informed that Narayan & Lakhan ran away after assaulting his brother, his brother was unconscious, and thereafter, he took him to Police Station: Chakarbhata.

It is true that Sushila Bai in her evidence before the Court has stated that the accused persons attacked Premlal with axe & spade, but as per the prosecution case, the accused persons attacked Premlal with Lathis, and Lathis have been recovered at the instance of the accused persons under Exs.P-15 & P-16. In her statement before the Police, Sushila Bai has stated that the accused persons assaulted Premlal with Lathis, but her evidence was recorded almost after one year, therefore, on account of the lapse of one year this

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discrepancy between Court evidence and statement before the Police Ex.D-1 appears to have occurred. But as per the evidence of Sushila Bai (PW-1), Chatlal (PW-2), who immediately reached on the scene after hearing the cries of PW-1, saw his brother lying in injured condition. Evidence of Chatlal is admissible under Section 6 of the Indian Evidence Act. The fact of involvement of the accused/appellants in assaulting Premlal is further corroborated by the dying declaration made by the deceased before the Head Constable at Police Station to whom he gave the information in which he stated that accused/appellants Lakhan & Narayan attacked with Lathis, when he was going towards the pond. The said dying declaration of Premlal has been proved by the evidence of Sunhar Singh (PW-6) who has stated that on 23-8-1992 at 0015 hours he was working as Head Constable in Police Station: Chakarbhata and at that time he made Roj Namcha entry Ex.P-5 as informed by Premlal. After recording the entry, he sent Premlal for medical examination to the Primary Health Centre. In cross-examination, this witness has categorically stated that Premlal was conscious when he gave the dying declaration Ex.P-5 and he has categorically denied the suggestion made by the counsel that the information recorded in Roj Namcha Sanha Ex.P-6 was recorded on the basis of the information given by Chatram. K.B.S. Bhadoriya (PW-17) on cross-examination by the counsel has also stated that when Premlal was brought to the Police Station he was present in the Police Station, Premlal was conscious and blood was oozing out of the injuries. In para 11 of his cross-examination, he has clearly stated that it is incorrect to say that when Premlal came to the Police Station he was unconscious.

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**आदेश पत्रक (पूर्वानुबद्ध)**

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Perusal of Ex.P-5-C, report entered in the Roj Namcha, reveals that Premlal gave information. Therefore, there is no reason to disbelieve the evidence of Sunhar Singh (PW-6) & K.B.S. Bhadoriya (PW-17) that the information Ex.P-5-C was given by none else than injured Premlal himself.

Therefore, in view of the evidence of PW-1 Sushila Bai, PW-2 Chatlal and the dying declaration made before PW-6 Sunhar Singh, Head Constable, in presence of PW-17 K.B.S. Bhadoriya, it is established that accused/appellants Lakhan & Narayan Prasad were the authors of the crime in question.

In view of the above, we are of the considered opinion that the conviction recorded by learned Additional Sessions Judge is based on legal evidence and we find no reason to interfere with the judgment of conviction and sentence recorded by learned Additional Sessions Judge.

In the result, the appeal, being devoid of any merit, is liable to be dismissed and it is hereby dismissed.

**Sd/-**
**L.C.BHADOO**
**Judge**

**Sd/-**
**Dhirendra Mishra**
**Judge**

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